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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,122	07/11/2003	Jeffrey Tilly	P02774	4111

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PHOENIX, AZ 85012

EXAMINER
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JOHNSON, BLAIR M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,122

Applicant(s)

TILLY, JEFFREY

Examiner

Blair M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 30-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-25, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 13, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

Claims 5,6 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, the "space saving means" is not representative of structure but points out an intended benefit of the device.

In claim 6, "color matching means" is also not representative of structure.

In claim 39, there is no antecedent basis for "the cover".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,5,6,10-12 and 15-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gross.

See containers 18, holding means 1, apertures 17 and fastening means 9. See also the center of gravity discussion , column 1, lines 19-29. Regarding claim 2, bottle caps are discharged through hole 13, such bottle caps being "capping means" which were on the containers. Regarding claims 5 and 6, no structure is recited. Regarding claim 9, the term "spices" is met by an substance that was in the containers. The top 5 is a "guarding means" and a "covering means". The "stopping means" of claim 15 reads on the bottom of the containers which contacts the rear wall.

Claims 16-19,22-25 and 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weindling.

The rack of Weindling is "substantially vertical" and "thin". The spice containers have labels on the caps, which are too large to fit through apertures 22. There is inherent friction between the containers and the holder. The center of gravity adds to the friction since it is located over the support surface provided by the holder. See fastener retainers 64,48. The position adjuster is met by the ability to mount the holder in a desired location. The bottom of the spice container apertures is a guard. The rack 12 serves as "cover" for the lower containers. The bottom of the cap provides the stop.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6,9-12,14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chase in view of Tisdale and further in view of Weindling.

Chase discloses a spice rack to be mounted to the bottom of a horizontal surface. Tisdale discloses a spice rack that is a thin member, vertically oriented, which is clearly intended to have spice containers inserted through the shallow apertures. It would have been obvious to modify Chase in view of this teaching by Tisdale to be a thin, planar member so as to be lighter, resist bending and sagging, to prevent the accumulation of debris in the apertures, among other benefits apparent to those of

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ordinary skill in the art. Weindling discloses conventional spice containers, which are clearly usable with the spice racks of both Chase and Tisdale. It would have been obvious to use the spice containers of Weindling with the spice rack of Chase. The holes through which fasteners extend for mounting meet the "retaining means". The planar shape of the holder provides a "guarding means". Also, the caps of the spice containers provide both "guarding means" and "covering means" and the "latching means" is met by the means disclosed by Weindling to hold the caps on the containers. The caps are clearly bigger than the apertures in Weindling and are capable of providing a "stopping means".

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chase in view of Tisdale and Weindling and further in view of Melito et al.

Spacers for under cabinet mounted devices are well known, as illustrated by Melito et al at 32. It would have been obvious to provide Chase with such spacers so as to accommodate cabinets with overlapping faces.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chase in view of Tisdale and Weindling and further in view of Pherigo.

The use of sifters on spice bottles is well known as illustrated by Pherigo. It would have been obvious to provide the bottles with such sifters to control dispensing.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weindling.

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The caps are clearly larger than the apertures 22 which would enable the caps to provide a "stopping means" in the event that the containers do not contact the bottom of the holder.

Claims 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weindling in view of Pherigo.

The use of sifters on spice bottles is well known as illustrated by Pherigo. It would have been obvious to provide the bottles with such sifters to control dispensing.

### ***Allowable Subject Matter***

Claims 13, 26, 27 and 31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

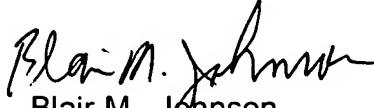
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (703) 308-0526. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Blair M. Johnson  
Primary Examiner  
Art Unit 3634

BMJ  
3/29/05